

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 750 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESH RAMANLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR GA PATHAN for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/02/98

ORAL JUDGEMENT (Per Patel, J.)

Appellant, being aggrieved by an order recorded by learned City Sessions Judge in Sessions Case No. 257/96 on 27.6.1997 convicting the appellant for an offence punishable under section 302 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment

for life and to pay a fine of Rs.1000/- (in default of payment of fine, three months' rigorous imprisonment, has preferred this appeal.

2. Earlier the matter was heard and the Court called for the Record & Proceedings by order dated 22.12.1997.

3. Learned advocate appearing for the appellant has taken us through the evidence and has made the submissions.

4. The prosecution case as it emerges from the complaint lodged before the Amraiwadi Police Station on 11.6.1996 by Rajendra Omkar Soni PW.1 Exh.6 is that on 11.6.1996, he returned from his office and was taking rest on the otta of the house of one Hasmukh Manilal. At about 7.45 pm. one Kiritbhai Patel, the deceased came on scooter No. GJ.1.K. 1322 and was going towards Rishikesh Nagar through the Society where the complainant was residing. One Dinesh Ramanlal Shah, the appellant, came from the opposite direction with a gupti in his hand and stopped Kiritbhai who was going on his scooter. There was some grappling between the two and the said Dinesh Ramanlal Shah delivered repeated blows by means of gupti on the vital part of the body, viz: Chest. Deceased Kiritbhai fell on the ground. The appellant ran away from the place of occurrence with the weapon in his hand.

5. Police Sub-Inspector Prajapati PW.9 Exh.19, who recorded the complaint, vide Exh, 7, proceeded to the spot and after completing the investigation, filed charge sheet against the appellant. The accused was committed to the Court of Sessions. The appellant pleaded not guilty to the charge framed by learned Additional Sessions Judge and claimed to be tried. On appreciation of evidence, oral as well as documentary, and hearing the submissions made by the learned advocate appearing for the appellant as well as for the prosecution, and considering the statement of the accused recorded under section 313 of the Criminal Procedure Code, learned Sessions Judge, after hearing the accused on the question of sentence, passed an order as referred to hereinabove.

6. Before us, learned advocate Mr. Pathan for the appellant submitted (i). that there was no sufficient light to identify the gupti which is alleged to have been used by the appellant, and, therefore, the evidence cannot be accepted. (ii). that out of the five witnesses examined by the prosecution as eye witnesses, the complainant Rajendra Omkar PW.1, Harshad PW.2 Exh.8,

Hasmukh PW.8 Exh.18 have not supported the prosecution and have been declared hostile, and, therefore, the prosecution version ought not to have been accepted by the learned Additional Sessions Judge. He further submitted that the learned Judge has seriously erred in relying on the evidence of Kanubhai, PW.6 Exh.15 and Deepakbhai PW.7 Exh. 16 who were witnesses to the incident; (iii). that Panchas have not supported the prosecution version, and therefore, the learned trial Judge ought not to have accepted the version of recovery or place of incident; (iv).that even if the Court comes to the conclusion that the accused has committed an offence, then in that case, considering the fact that there was grappling, a view can be taken that some altercation must have taken place as a result of which the accused took out the weapon and caused injuries and, therefore, it can be said that there was no intention on the part of the accused to commit an offence punishable under section 302 of the Indian Penal Code, and in the instant case, offence said to have been committed is an offence under section 304.Part 1.

7. We have perused the evidence. There are eye witnesses viz: Kanubhai Anthaji PW.6 and Deepakbhai, PW.7, whose version is in conformity with the complaint given by Rajendra Omkar which is at Exh.7. Complainant is an educated person and has signed the complaint giving details about the area. He has also stated in his deposition as to where Jyotsnaben is residing and that Kiritbhai was frequently visiting her. He has also stated in the complaint that Jyotsnaben is riding on a Luna and on several occasions, he has seen Dinesh on the pillion seat of the said Luna, and, therefore, he knows Dinesh. However, he has not supported the prosecution version before the Court. Learned Sessions Judge has thought it fit to believe the version of Kanubhai Anthaji, PW.6, Exh.15 and Deepakbhai Popatbhai PW.7 Exh. 16.

8. Kanubhai PW.6 has supported the prosecution version and has stated that at the relevant time he was at the tea stall. Harshad and Deepak were also present. He further stated on oath that Kiritbhai was passing on a scooter, and at that time, Dinesh stopped him and Dinesh asked Kiritbhai as to why, despite telling him not to meet, he is meeting Jyotsna. Thereafter, there was grappling between the two and Dinesh gave a slap to Kiritbhai. Thereafter, Kiritbhai, the deceased put the scooter aside and at that time, Dinesh, the accused-appellant took out a gupti and delivered a blow. He has further stated after Kiritbai fell down, one or

two more gupti blows were given, and thereafter, Dinesh ran away towards the well of Shamjibahi. This witness has identified the weapon in question.

9. So far as Deepakbhai PW.7 is concerned, he has stated that at the relevant time he was sitting at the tea stall and he was accompanied by Kanubhai and Harshad. He has stated that Dinesh was also standing nearby; Kiritbhai came from the Society on a scooter; there was a grappling between Dinesh and Kiritbhai. Kiritbhai fell down and thereafter Dinesh delivered blows by means of gupti. He has also stated that Kiritbhai changed his position, even thereafter, two or three blows were delivered. He has stated that he left the place immediately thereafter. He has also identified the weapon in question.

10. Harshad, PW. 2, who is declared hostile by the prosecution, has also referred to the presence of Dinesh, on a question being put by the defence. It appears that in the cross-examination he was questioned that the man who was grappling with the deceased Kirit was a man looking like Dinesh, and this witness has replied that it was Dinesh and he knew him.

11. Thus, presence of Dinesh is established. He was the person grappling with the deceased. Merely because three witnesses have not supported the prosecution version, the evidence of the remaining two witnesses cannot be discarded. If their evidence is otherwise reliable and convincing, there is no reason why not to accept that evidence. Thus, the submission of Mr. Pathan in this regard is devoid of any merit.

12.(i). Dr. Pratima Oza, PW.13, who has performed the post-mortem has pointed out in her evidence that there were in all four incised wounds, which are as under:-

- (1). Incised wound 1 X 1/2 X 2 cm. in size on left axillary.
- (2). Incised wound 2 X 1 X 1 cm in size inside chest 6 to 8 cm. below left nipple.
- (3). Incised wound of 1.5 X 1 X 3 cm. on right side of chest 8 cms. below the right nipple.
- (4). Incised wound 1 X 1/2 X 1 cm. on the left axilla.

12(ii). She has further deposed that because of the external injuries, internal injuries were caused such as Sternum was cut obliquely at 7th rib at junction of

left side. Left lung was also cut. Blood clots of about 1 kg. weight were found. Liver was also cut on the left side about 1 X 2 cm. in size. She has further stated that the above injuries were ante-mortem in nature. She has stated that the cause of death is due to shock as a result of injury to the vital organs, mainly left lung and liver, and these injuries were sufficient in ordinary course of nature to cause death of a person. In the cross examination, this witness has stated that all the four injuries are possible by the single weapon shown to her viz: the muddamal Gupti.

13. Learned advocate Mr. Pathan submitted that panchas have not supported so far as the discovery and scene of offence is concerned. The Investigating Officer has no personal interest. His duty was to call two panchas and in their presence, he was required to draw a panchanama of the scene of occurrence and accordingly, he has drawn the panchnama of the scene of occurrence where blood was found, and that blood, as per the opinion of the expert, was of group 'A' which is the blood group of the deceased. The blood found on the gupti was also of 'A' group. Anyhow, panchas, so far as the recovery is concerned, have not supported the prosecution version. However, reading the evidence of the Investigating Officer, complaint Exh.7 and evidence of eye witness Kanubhai and Deepakbhai and the evidence of medical officer Dr. Pratima B Oza, it is clear that the appellant is guilty for the offence and his presence is well established. Hence the submission of Mr. Pathan that the trial is vitiated as Panchas have not supported the recovery, has no merit.

14. Learned advocate submitted that there was no sufficient light to see the gupti. It may be stated that incident took place between 7.00 pm to 8.00 pm on 11.6.1997. The being a summer day, there would be sufficient light. The incident has not occurred in a remote village, but has taken place within the city limits. Moreover, eye witnesses have stated that there was sufficient light and they were able to identify the weapon. In view of this, this submission has no merit. Moreover, no question was put to any of the witness that due to insufficient light they could not have seen the weapon.

15. This brings us to the last submission of Mr. Pathan that the offence is one that is punishable under section 304 Part I. The evidence reveals that the accused was with a gupti in his hand. The incident cannot be termed as 'accidental' because the

accused-appellant had referred to a past warning not to go to the house of Jyotsnaben. What was the necessity for the appellant to be present with a weapon. This reveals that the appellant had a pre-determined mind. Moreover, the appellant inflicted repeated blows on the person of the deceased even after the deceased fell down on the ground. As per the medical evidence, there were as many as four wounds, all on vital parts of the body. In the circumstances, it cannot be said at all that the offence is under section 304 Part I. The learned trial Judge has rightly convicted and sentenced the appellant for an offence punishable under section 302 of the Indian Penal Code.

16. We have carefully considered the record of this case and heard learned advocate at length. We are convinced that the judgment requires no interference as we are in complete agreement with the findings arrived at by the learned trial Judge. We are, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court. Expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

17. In the result, we confirm the order of conviction and sentence recorded by the learned trial Judge. The appeal stands dismissed.

csm./ -----